

No. 19862

**UNITED STATES OF AMERICA
and
PHILIPPINES**

**Project Loan and Grant Agreement for Barangay water
(with annexes). Signed at Manila on 3 May 1978**

Authentic text: English.

Registered by the United States of America on 10 June 1981.

**ÉTATS-UNIS D'AMÉRIQUE
et
PHILIPPINES**

**Accord de prêt et de don relatif à un projet concernant
l'approvisionnement en eau des barangays (avec annexes). Signé à Manille le 3 mai 1978**

Texte authentique : anglais.

Enregistré par les États-Unis d'Amérique le 10 juin 1981.

PROJECT LOAN AND GRANT AGREEMENT¹ BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE UNITED STATES
OF AMERICA FOR BARANGAY WATER

Dated: May 3, 1978

A.I.D. Loan Number 492-U-049
Project Number 492-0291

TABLE OF CONTENTS

LOAN AND GRANT AGREEMENT

Article 1. The Agreement	Section 6.4. Environmental Assessment
Article 2. The Project	Section 6.5. Use of Loan Repayments
Section 2.1. Definition of Project	Section 6.6. Condition Precedent to Commencement of Construction of Individual Water-works Systems
Article 3. Financing	Article 7. Procurement Source
Section 3.1. The Grant; The Loan	Section 7.1. Foreign Exchange Costs
Section 3.2. Cooperating Country Resources for the Project	Section 7.2. Local Currency Costs
Section 3.3. Project Assistance Completion Date	Article 8. Disbursements
Article 4. Loan Terms	Section 8.1. Disbursement for Foreign Exchange Costs
Section 4.1. Interest	Section 8.2. Disbursement for Local Currency Costs
Section 4.2. Repayment	Section 8.3. Other Forms of Disbursement
Section 4.3. Application, Currency, and Place of Payment	Section 8.4. Rate of Exchange
Section 4.4. Prepayment	Section 8.5. Date of Disbursement
Section 4.5. Renegotiation of Terms	Article 9. Miscellaneous
Section 4.6. Termination on Full Payment	Section 9.1. Communications
Article 5. Conditions Precedent to Disbursement	Section 9.2. Representatives
Section 5.1. First Disbursement	Section 9.3. Standard Provisions Annex
Section 5.2. Notification	
Section 5.3. Terminal Date for Conditions Precedent	<i>Annex I—Description of Project</i>
Article 6. Special Covenants	Description of Project
Section 6.1. Project Evaluation	Attachment 1. Project Financial Plan
Section 6.2. Project Management Staff	
Section 6.3. Recertification of Provinces and Rural Service Centers	[<i>Annex II—Combined Loan and Grant Standard Provisions Annex</i>]

¹ Came into force on 3 May 1978 by signature.

LOAN AND GRANT AGREEMENT dated May 3, 1978, between the REPUBLIC OF THE PHILIPPINES (“Cooperating Country”) and the UNITED STATES OF AMERICA, acting through the AGENCY FOR INTERNATIONAL DEVELOPMENT (“A.I.D.”).

Article 1. THE AGREEMENT

The purpose of this Agreement is to set out the understandings of the parties named above (“Parties”) with respect to the undertaking by the Cooperating Country of the Project described herein, and with respect to the financing of the Project by the Parties.

Article 2. THE PROJECT

Section 2.1. DEFINITION OF PROJECT. The Project, which is further described in Annex I, will consist of the construction or improvement of small community water systems to improve health and increase productivity in the affected area and establish, in the process, the capability of selected local governments to identify, plan, organize and install functional barangay cooperative water systems with their own management and maintenance capacity. Annex I attached, amplifies the definition of the Project contained in this Section 2.1. Within the limits of the definition of the Project in this Section 2.1, elements of the amplified description stated in Annex I may be changed by written agreement of the authorized representatives of the Parties named in Section 9.2, without formal amendment of this Agreement. Annex I will identify those elements of the Project for which Grant financing will be employed, and those for which Loan financing will be employed.

Article 3. FINANCING

Section 3.1. THE GRANT; THE LOAN. To assist the Cooperating Country to meet the costs of carrying out the Project, A.I.D., pursuant to the Foreign Assistance Act of 1961, as amended, agrees to grant the Cooperating Country under the terms of this agreement not to exceed One Hundred Eighty-Four Thousand United States (“U.S.”) Dollars (\$184,000.00) (“Grant”) and to lend the Cooperating Country under the terms of this Agreement not to exceed Three Million U.S. Dollars (\$3,000,000.00) (“Loan”). The aggregate amount of disbursements under the Loan is referred to as “Principal”. The Loan and the Grant together are referred to as the “Assistance”.

The Assistance may be used to finance foreign exchange costs, as defined in Section 7.1, and local currency costs, as defined in Section 7.2, of goods and services required for the Project.

Section 3.2. COOPERATING COUNTRY RESOURCES FOR THE PROJECT.
(a) The Cooperating Country agreed to provide or cause to be provided for the Project all funds, in addition to the Assistance, and all other resources required to carry out the Project effectively and in a timely manner.

(b) The resources provided by the Cooperating Country for the Project will be not less than the equivalent of US\$3,179,000.00, including costs borne on an “in-kind” basis.

Section 3.3. PROJECT ASSISTANCE COMPLETION DATE. (a) The "Project Assistance Completion Date" (PACD), which is June 30, 1981, or such other date as the Parties may agree to in writing, is the date by which the Parties estimate that all portions of the Project financed jointly by them on a Fixed Amount Reimbursement (FAR) basis will have been completed, that all services financed under the Loan other than on a FAR basis will have been performed and that all goods financed under the Loan other than on a FAR basis will have been furnished for the Project as contemplated in this Agreement.

(b) Except as A.I.D. may otherwise agree in writing, A.I.D. will not issue or approve documentation which would authorize disbursement of the Loan for FAR portions of the Project completed subsequent to the PACD, or, in case of portions of the Project financed under the Loan other than on a FAR basis, for services performed subsequent to the PACD or for goods furnished for the Project, as contemplated in this Agreement, subsequent to the PACD.

(c) Requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, are to be received by A.I.D. or any bank described in Section 8.1 no later than nine (9) months following the PACD, or such other period as A.I.D. agrees to in writing. After such period, A.I.D., giving notice in writing to the Cooperating Country, may at any time or times reduce the amount of the Assistance by all or any part thereof for which requests for disbursement, accompanied by necessary supporting documentation prescribed in Project Implementation Letters, were not received before the expiration of said period.

Article 4. LOAN TERMS

Section 4.1. INTEREST. The Cooperating Country will pay to A.I.D. interest which will accrue at the rate of two percent (2%) per annum for ten years following date of the first disbursement of the Loan hereunder and at the rate of three percent (3%) per annum thereafter on the outstanding balance of Principal and on any due and unpaid interest. Interest on the outstanding balance will accrue from the date (as defined in Section 8.5) of each respective disbursement, and will be computed on the basis of a 365-day year. Interest will be payable no later than six (6) months after the first disbursement of the Loan hereunder, on a date to be specified by A.I.D.

Section 4.2. REPAYMENT. The Cooperating Country will repay to A.I.D. the Principal within twenty (20) years from the date of the first disbursement of the Loan in twenty-one (21) approximately equal semi-annual installments of Principal and interest. The first installment of Principal will be payable nine and one-half (9½) years after the date on which the first interest payment is due in accordance with Section 4.1. A.I.D. will provide the Cooperating Country with an amortization schedule in accordance with this Section after the final disbursement under the Loan.

Section 4.3. APPLICATION, CURRENCY, AND PLACE OF PAYMENT. All payments of interest and Principal hereunder will be made in U.S. dollars and will be applied first to the payment of interest due and then to the repayment of Principal. Except as A.I.D. may otherwise specify in writing, payments will be made to the Controller, Office of Financial Management, Agency for International Development, Washington, D.C. 20523, U.S.A., and will be deemed made when received by the Office of Financial Management.

Section 4.4. PREPAYMENT. Upon payment of all interest and any refunds then due, the Cooperating Country may prepay, without penalty, all or any part of the Principal. Unless A.I.D. otherwise agrees in writing, any such prepayment will be applied to the installments of Principal in the inverse order of their maturity.

Section 4.5. RENEGOTIATION OF TERMS. (a) The Cooperating Country and A.I.D. agree to negotiate, at such time or times as either may request, an acceleration of the repayment of the Loan in the event that there is any significant and continuing improvement in the internal and external economic and financial position and prospects of the Republic of the Philippines, which enable the Cooperating Country to repay the Loan on a shorter schedule.

(b) Any request by either Party to the other to so negotiate will be made pursuant to Section 9.1, and will give the name and address of the person or persons who will represent the requesting Party in such negotiations.

(c) Within thirty (30) days after delivery of a request to negotiate, the requested party will communicate to the other, pursuant to Section 9.1, the name and address of the person or persons who will represent the requested Party in such negotiations.

(d) The representatives of the Parties will meet to carry on negotiations no later than thirty (30) days after delivery of the requested Party's communication under Sub-section (c). The negotiations will take place at a location mutually agreed upon by the representatives of the Parties, provided that, in the absence of mutual agreement, the negotiations will take place at the Office of the Cooperating Country Director-General of the National Economic and Development Authority in the Republic of the Philippines.

Section 4.6. TERMINATION ON FULL PAYMENT. Upon payment in full of the Principal and any accrued interest, this Agreement and all obligations of the Cooperating Country and A.I.D. relating to the Loan provisions of this Agreement will cease. However, with respect to any obligations arising out of the expenditure of Grant funds, this Agreement will remain in full force and effect.

Article 5. CONDITIONS PRECEDENT TO DISBURSEMENT

Section 5.1. FIRST DISBURSEMENT. Prior to the first disbursement of the Assistance, or to the issuance by A.I.D. of documentation pursuant to which disbursement will be made, the Cooperating Country will, except as A.I.D. may otherwise agree in writing, furnish to A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of counsel acceptable to A.I.D. that this Agreement has been duly authorized and/or ratified by, and executed on behalf of, the Cooperating Country and that it constitutes a valid and legally binding obligation of the Cooperating Country in accordance with all of its terms;
- (b) A statement of the names of the persons holding or acting in the office of the Cooperating Country specified in Section 9.2, and a specimen signature of each person specified in such statement;
- (c) A copy of a contract with an acceptable local architectural and engineering firm or firms to provide review of plans and specifications for the construction

or rehabilitation of water systems and to monitor such construction or rehabilitation in a manner satisfactory to A.I.D.;

- (d) The evaluation program referred to in Section 6.1; and
- (e) Evidence that recommendations made in the evaluation of the 1977 pilot program, and accepted by the Cooperating Country, will be implemented.

Section 5.2. NOTIFICATION. When A.I.D. has determined that the conditions precedent specified in Section 5.1 have been met, it will promptly notify the Cooperating Country.

Section 5.3. TERMINAL DATE FOR CONDITIONS PRECEDENT. If all of the conditions specified in Section 5.1 have not been met within 120 days from the date of this Agreement, or such later date as A.I.D. may agree to in writing, A.I.D., at its option, may terminate this Agreement by written notice to the Cooperating Country.

Article 6. SPECIAL COVENANTS

Section 6.1. PROJECT EVALUATION. The Parties agree to establish an evaluation program as an integral part of the Project. Except as the Parties otherwise agree in writing, the program will include, during the implementation of the Project and at one or more points thereafter: (a) evaluation of progress toward attainment of the objectives of the Project; (b) identification and evaluation of problem areas or constraints which may inhibit such attainment; (c) assessment of how such information may be used to help overcome such problems, in this or other project; and (d) evaluation, to the degree feasible, of the overall development impact of the Project.

Section 6.2. PROJECT MANAGEMENT STAFF. The Cooperating Country covenants and agrees that a project management staff at the national level will be established with an adequate number of professional and full-time personnel to execute the Project.

Section 6.3. RECERTIFICATION OF PROVINCES AND RURAL SERVICE CENTERS. The Cooperating Country covenants and agrees to conduct annual recertification of participating provinces and Rural Service Centers in order to demonstrate compliance with Project administrative, organizational and technical requirements.

Section 6.4. ENVIRONMENTAL ASSESSMENT. The Cooperating Country covenants and agrees that an environmental assessment of the Project will be conducted, and will be reviewed for appropriate application in the post-authorization design and implementation stages of the Project.

Section 6.5. USE OF LOAN REPAYMENTS. The Cooperating Country covenants and agrees that funds repaid by Barangay Water Associations to participating local governments on account of loans contracted by the former with the latter, for the construction of water systems, will be used to finance the construction and rehabilitation of other water systems utilizing the criteria and methodology of the Barangay Water Program.

Section 6.6. CONDITION PRECEDENT TO COMMENCEMENT OF CONSTRUCTION OF INDIVIDUAL WATERWORKS SYSTEMS. Beginning with subprojects to be constructed after January 1, 1979, and prior to the commencement of construction of any individual waterworks system having an estimated cost (determined

at the time of DLGCD final review) exceeding the cost of the peso equivalent of \$40,000.00, the Cooperating Country shall, except as A.I.D. may otherwise agree in writing, submit for A.I.D. review and approval, construction plans, costs and specifications which show siting of such system and intended beneficiaries.

Article 7. PROCUREMENT SOURCE

Section 7.1. FOREIGN EXCHANGE COSTS. (a) Disbursements of Loan funds pursuant to Section 8.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in countries included in Code 941 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods and services ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

(b) Disbursements of Grant funds pursuant to Section 8.1 will be used exclusively to finance the costs of goods and services required for the Project having their source and origin in the United States (Code 000 of the A.I.D. Geographic Code Book as in effect at the time orders are placed or contracts entered into for such goods or services) ("Foreign Exchange Costs"), except as A.I.D. may otherwise agree in writing, and except as provided in the Standard Provisions Annex, Section C.1(b) with respect to marine insurance.

Section 7.2. LOCAL CURRENCY COSTS. Disbursements of Loan funds pursuant to Section 8.2 will be used exclusively to finance the costs of goods and services required for the Project having their source and, except as A.I.D. may otherwise agree in writing, their origin in the Republic of the Philippines ("Local Currency Costs"). To the extent provided for under this Agreement, "Local Currency Costs" may also include the provision of local currency resources required for the Project.

Article 8. DISBURSEMENTS

Section 8.1. DISBURSEMENT FOR FOREIGN EXCHANGE COSTS. After satisfaction of conditions precedent, the Cooperating Country may obtain disbursements of funds under the Loan or the Grant for the Foreign Exchange Costs of goods or services required for the Project in accordance with the terms of the Agreement, by such of the following methods as may be mutually agreed upon:

- (1) By submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, (A) requests for reimbursement for such goods or service, or (B) requests for A.I.D. to procure commodities or services in the Cooperating Country's behalf for the Project; or
- (2) By requesting A.I.D. to issue Letters of Commitment for specified amounts (A) to one or more U.S. banks, satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made by them to contractors or suppliers, under Letters of Credit or otherwise, for such goods or services, or (B) directly to one or more contractors or suppliers, committing A.I.D. to pay such contractors or suppliers, through Letters of Credit or otherwise, for such goods or services.

Section 8.2. DISBURSEMENT FOR LOCAL CURRENCY COSTS. (a) After satisfaction of conditions precedent, the Cooperating Country may obtain disbursement of funds under the Loan for Local Currency Costs required for the Project in accordance with the terms of this Agreement, by submitting to A.I.D., with necessary supporting documentation as prescribed in Project Implementation Letters, requests to finance such costs.

(b) The local currency needed for such disbursement hereunder may be obtained:

- (1) By acquisition by A.I.D. with U.S. dollars by purchase or from local currency already owned by the U.S. Government; or
- (2) By A.I.D. (A) requesting the Cooperating Country to make available the local currency for such costs; and (B) thereafter making available to the Cooperating Country through the opening or amendment by A.I.D. of Special Letters of Credit in favor of the Cooperating Country or its designee, an amount of U.S. dollars equivalent to the amount of local currency made available by the Cooperating Country, which dollars will be utilized for procurement from the United States under appropriate procedures described in Project Implementation Letters.

The U.S. dollar equivalent of the local currency made available hereunder will be, in the case of subsection (b)(1) above, the amount of U.S. dollars required by A.I.D. to obtain the local currency, and in the case of subsection (b)(2) above, an amount calculated at the rate of exchange specified in the applicable Special Letter of Credit Implementation memorandum hereunder as of the date of the opening or amendment of the applicable Special Letter of Credit.

Section 8.3. OTHER FORMS OF DISBURSEMENT. Disbursements of the Loan or the Grant may be made through such other means as the Parties may agree to in writing.

Section 8.4. RATE OF EXCHANGE. Except as may be more specifically provided under Section 8.2, if funds provided under the Loan are introduced into the Republic of the Philippines by A.I.D. or any public or private agency for purposes of carrying out obligations of A.I.D. hereunder, the Cooperating Country will make such arrangements as may be necessary so that such funds may be converted into currency of the Republic of the Philippines at the highest rate of exchange which, at the time the conversion is made, is not unlawful in the Republic of the Philippines.

Section 8.5. DATE OF DISBURSEMENT. Disbursements of the Loan by A.I.D. will be deemed to occur (a) on the date on which A.I.D. makes a disbursement to the Cooperating Country or its designee, or to a bank, contractor or supplier pursuant to a Letter of Commitment or Credit; (b) on the date on which A.I.D. disburses to the Cooperating Country or its designee local currency acquired in accordance with Section 8.2(b)(1); or, (c) if local currency is obtained in accordance with Section 8.2(b)(2), on the date on which A.I.D. opens or amends the Special Letter of Credit there referred to.

Article 9. MISCELLANEOUS

Section 9.1. COMMUNICATIONS. Except as expressly provided in Section 4.3, any notice, request, document or other communication submitted by

either Party to the other under this Agreement will be deemed duly given or sent when delivered to such Party at the following address:

To the Cooperating Country:

Mail Address:

National Economic and Development Authority
P.O. Box 1116
Manila, Philippines

Alternate address for cables:
NEDAPHIL

To A.I.D.:

Mail Address:

United States Agency for International Development
c/o The American Embassy
Manila, Philippines

Alternate address for cables:
USAID/AMEMB Manila

All such communications will be in English, unless the Parties otherwise agree in writing. Other addresses may be substituted for the above upon the giving of notice.

Section 9.2. REPRESENTATIVES. For all purposes relevant to this Agreement, the Cooperating Country will be represented by the individual holding or acting in the office of the Director-General, National Economic and Development Authority and A.I.D. will be represented by the individual holding or acting in the office of the Director, United States A.I.D. Mission to the Philippines, each of whom, by written notice, may designate additional representatives for all purposes other than exercising the power under Section 2.1 to revise elements of the amplified description in Annex I. The names of the representatives of the Cooperating Country, with specimen signatures, will be provided to A.I.D., which may accept as duly authorized any instrument signed by such representatives in implementation of this Agreement, until receipt of written notice of revocation of their authority.

Section 9.3. STANDARD PROVISIONS ANNEX. A "Combined Loan and Grant Standard Provisions Annex" (Annex II) is attached to and forms part of this Agreement.

IN WITNESS WHEREOF, the Cooperating Country and the United States of America, each acting through its duly authorized representative, have caused this Agreement to be signed in their names and delivered as of the day and year first above written.

Republic of the Philippines:

[Signed]

By: MANUEL S. ALBA
Title: Acting Director-General, National Economic and Development Authority

United States of America:

By: [Signed]

PETER M. CODY
Title: Director, U.S. Agency for International Development

ANNEX I

DESCRIPTION OF PROJECT

Community water systems in most of the Philippines are either non-existent, woefully inadequate, or provide water which is considered unsafe for human consumption. Studies indicate that approximately 80% of the population lives outside an organized system altogether. The remaining 20% of the population that does come under the jurisdiction of a water system is in one way or another seriously inconvenienced or baset by a host of problems related to the provision of an adequate quantity and an acceptable quality of potable water.

Most of the water utilities serving provincial communities were constructed in the 1940's. Since that time, the migration from more remote areas and the normal growth in population have increased the size of the barangays many times over. Without exception, the utilities have not been expanded to keep pace with the resultant population growth. These factors, together with the failure to adequately maintain the previously constructed facilities have reduced the capabilities of the utilities to meet the needs of today's consumers.

The Barangay Water Program is a rural program. It aims at providing domestic water to small rural communities ranging from 300-5,000 people in size.

The objective of the program is to improve the general health and productivity in the areas to be serviced by the Project and in so doing improve the quality of life.

A more specific and intermediate objective is to establish the capability of selected local governments to identify, plan, organize, and install functional barangay cooperative water systems with an indigenous maintenance capacity to provide safe, reliable, low-cost water through small systems with appropriate technology and organization.

The Project will be developed through the Local Development Assistance Office (LDAO) of the Department of Local Government and Community Development (DLGCD) working in close cooperation with other pertinent national and international agencies and the respective participating provinces and cities. They have demonstrated both the institutional capacity and the procedural means to execute relatively sophisticated infrastructure projects. It is anticipated that a minor addition of personnel will be required by DLGCD at the national level.

The individual subprojects to be undertaken at the community level will emanate from the Provincial Water Resource Development Plans. The latter will be an integral part of the overall provincial comprehensive development plan. The preparation of such documents will be the responsibility of the various provincial development staff personnel working in coordination with the appropriate local government, collateral agencies at the provincial level, and the respective barangays to be assisted. Identified subprojects that are deemed technically sound, economically feasible, acceptable to the provincial Sangguniang Panlalawigan, and which meet the criteria outlined by DLGCD will be eligible for funding.

The intent of this Project is to assist local government units in the formation of water associations or cooperatives, with the capacity to deliver safe water; be reliable; service as large a segment of the community as is economically possible; match the growth of the population over the life of the system; maintain rates and charges that are within the financial means of all customers, and at the same time be self-sustaining.

Training will be an essential element of the Project. It will be offered on an on-going basis through DLGCD and A.I.D. for both the participating provinces and the barangay water associations.

Participating provinces and cities will number up to 20 in FY 78; 25 in FY 79; and 30 in FY 80. Approximately 315 local government officials connected with provincial engineering, provincial development planning staffs, and other offices vital to the Project's success will be trained. Provincial Water Resource Inventories and 5-year plans will be prepared.

The participating provinces will also be required to increase both their planning and technical capacity in order to conduct feasibility studies, prepare project designs, train local institutions, implement the construction of the subprojects and levy assistance in the major repair of systems. Additionally, Barangay Water Associations will be organized and trained.

Over the life of the Project, about 200 associations, depending upon the size of projects selected, are expected to be organized and trained.

Annex I—Attachment 1

BARANGAY WATER PROJECT—
PROJECT FINANCIAL PLAN

(Source and application of funding—\$000)

Project No. 492-0291

<i>Project inputs</i>	<i>Amount for a fully funded Project</i>				
	<i>A.I.D.</i>		<i>Borrower/ Grantee</i>	<i>Other</i>	<i>Total</i>
	<i>Loan</i>	<i>Grant</i>			
1) Construction of waterworks systems (FAR) and overhead	3,000	—	1,050	—	4,050
2) Technical assistance and participant training ..		184	—	—	184
3) Budgetary support training, operations, salaries, administration and consulting services			2,129		2,129
TOTALS	3,000	184	3,179	—	6,363

ANNEX II

COMBINED LOAN AND GRANT PROJECT STANDARD PROVISIONS ANNEX

Definitions. As used in this Annex, the “Agreement” refers to the Loan and Grant Agreement to which this Annex is attached and of which this Annex forms a part. Terms used in this Annex have the same meaning or reference as in the Agreement.

Article A. PROJECT IMPLEMENTATION LETTERS

To assist the Cooperating Country in the implementation of the Project, A.I.D., from time to time, will issue Project Implementation Letters that will furnish additional information about matters stated in this Agreement. The Parties may also use jointly agreed-upon Project Implementation Letters to confirm and record their mutual understanding on aspects of the implementation of this Agreement. Project Implementation Letters will not be used to amend the text of the Agreement, but can be used to record revisions or exceptions which are permitted by the Agreement, including the revision of elements of the amplified description of the Project in Annex I.

Article B. GENERAL COVENANTS

Section B.1. CONSULTATION. The Parties will cooperate to assure that the purpose of this Agreement will be accomplished. To this end, the Parties, at the request of either, will exchange views on the progress of the Project, the performance of obligations under this Agreement, the performance of any consultants, contractors or suppliers engaged on the Project, and other matters relating to the Project.

Section B.2. EXECUTION OF PROJECT. The Cooperating Country will:

- (a) Carry out the Project or cause it to be carried out with due diligence and efficiency, in conformity with sound technical, financial, and management practices, and in conformity with those documents, plans, specifications, contracts, schedules or other arrangements, and with any modifications therein, approved by A.I.D. pursuant to this Agreement; and
- (b) Provide qualified and experienced management for, and train such staff as may be appropriate for the maintenance and operation of the Project, and, as applicable for continuing activities, cause the Project to be operated and maintained in such manner as to assure the continuing and successful achievement of the purposes of the Project.

Section B.3. UTILIZATION OF GOODS AND SERVICES. (a) Any resources financed under the Assistance will, unless otherwise agreed in writing by A.I.D., be devoted to the Project until the completion of the Project, and thereafter will be used so as to further the objectives sought in carrying out the Project.

(b) Goods or services financed under the Assistance, except as A.I.D. may otherwise agree in writing, will not be used to promote or assist a foreign aid project or activity associated with or financed by a country not included in Code 935 of the A.I.D. Geographic Code Book as in effect at the time of such use.

Section B.4. TAXATION. (a) This Agreement and the Assistance will be free from, and the Principal and interest will be paid free from, any taxation or fees imposed under laws in effect in the territory of the Cooperating Country.

(b) To the extent that (1) any contractor, including any consulting firm, any personnel of such contractor financed under the Assistance, and any property or transaction relating to such contracts, and (2) any commodity procurement transaction financed under the Assistance, are not exempt from identifiable taxes, tariffs, duties or other levies imposed under laws in effect in the territory of the Cooperating Country, the Cooperating Country will, as and to the extent provided in and pursuant to Project Implementation Letters, pay or reimburse the same with funds other than those provided under the Assistance.

Section B.5. REPORTS, RECORDS, INSPECTIONS, AUDIT. The Cooperating Country will:

- (a) Furnish A.I.D. such information and reports relating to the Project and to this Agreement as A.I.D. may reasonably request;
- (b) Maintain or cause to be maintained, in accordance with generally accepted accounting principles and practices consistently applied, books and records relating to the Project and to this Agreement, adequate to show, without limitation, the receipt and use of goods and services acquired under the Assistance. Such books and records will be audited regularly, in accordance with generally accepted auditing standards, and maintained for three years after the date of last disbursement by A.I.D.; such books and records will also be adequate to show the nature and extent of solicitations of prospective suppliers of goods and services acquired, the basis of award of contracts and orders, and the overall progress of the Project toward completion; and
- (c) Afford authorized representatives of a Party the opportunity at all reasonable times to inspect the Project, the utilization of goods and services financed by such Party, and books, records and other documents relating to the Project and the Assistance.

Section B.6. COMPLETENESS OF INFORMATION. The Cooperating Country confirms:

- (a) That the facts and circumstances of which it has informed A.I.D., or caused A.I.D. to be informed, in the course of reaching agreement, with A.I.D. on the Assistance, are accurate and complete, and include all facts and circumstances that might materially affect the Project and the discharge of responsibilities under this Agreement; and

(b) That it will inform A.I.D. in timely fashion of any subsequent facts and circumstances that might materially affect, or that it is reasonable to believe might so affect, the Project or the discharge of responsibilities under this Agreement.

Section B.7. OTHER PAYMENTS. The Cooperating Country affirms that no payments have been or will be received by any official of the Cooperating Country in connection with the procurement of goods or services financed under the Assistance except fees, taxes, or similar payments legally established in the territory of the Cooperating Country.

Section B.8. INFORMATION AND MARKING. The Cooperating Country will give appropriate publicity to the Assistance and the Project as a program to which the United States has contributed, identify the Project site, and mark goods financed by A.I.D., as described in Project Implementation Letters.

Article C. PROCUREMENT PROVISIONS

Section C.1. SPECIAL RULES. (a) The source and origin of ocean and air shipping will be deemed to be the ocean vessel's or aircraft's country of registry at the time of shipment.

(b) Premiums for marine insurance placed in the territory of the Cooperating Country will be deemed an eligible Foreign Exchange Cost, if otherwise eligible under Section C.7(a).

(c) Any motor vehicles financed under the Assistance will be of United States manufacture, except as A.I.D. may otherwise agree in writing.

(d) Transportation by air, financed under the Grant, of property or persons (and their personal effects) will be on carriers holding United States certification, to the extent service by such carriers is available. Details on this requirement will be described in a Project Implementation Letter.

Section C.2. ELIGIBILITY DATE. No goods or services may be financed under the Assistance which are procured pursuant to orders or contracts firmly placed or entered into prior to the date of this Agreement, except as the Parties may otherwise agree in writing.

Section C.3. PLANS, SPECIFICATIONS AND CONTRACTS. In order for there to be mutual agreement on the following matters, and except as the Parties may otherwise agree in writing:

(a) The Cooperating Country will furnish to A.I.D. upon preparation:

- (1) Any plans, specifications, procurement or construction schedules, contracts, or other documentation relating to the prequalification and selection of contractors and to the solicitation of bids and proposals. Material modifications in such documentation will likewise be furnished A.I.D. on preparation; and
- (2) Such documentation will also be furnished to A.I.D., upon preparation, relating to any goods or services which, though not financed under the Assistance, are deemed by A.I.D. to be of major importance to the Project. Aspects of the Project involving matters under this subsection (a)(2) will be identified in Project Implementation Letters.

(b) Documents related to the prequalification of contractors, and to the solicitation of proposals for goods and services financed under the Assistance will be approved by A.I.D. in writing prior to their issuance, and their terms will include United States standards and measurements;

(c) Contracts and contractors financed under the Assistance for engineering and other professional services, for construction services, and for such other services, equipment or materials as may be specified in Project Implementation Letters, will be approved by A.I.D. in writing prior to execution of the contract. Material modifications in such contracts will also be approved in writing by A.I.D. prior to execution; and

(d) Consulting firms used by the Cooperating Country for the Project but not financed under the Assistance, the scope of their services and such of their personnel assigned to the Project as A.I.D. may specify, and construction contractors used by the Cooperating Country for the Project but not financed under the Assistance shall be acceptable to A.I.D.

Section C.4. REASONABLE PRICE. No more than reasonable prices will be paid for any goods or services financed, in whole or in part, under the Assistance. Such items will be procured on a fair, and, to the maximum extent practicable, on a competitive basis.

Section C.5. NOTIFICATION TO POTENTIAL SUPPLIERS. To permit all United States firms to have the opportunity to participate in furnishing goods and services to be financed under the Assistance, the Cooperating Country will furnish A.I.D. such information with regard thereto, and at such times, as A.I.D. may request in Project Implementation Letters.

Section C.6. SHIPPING. (a) Goods which are to be transported to the territory of the Cooperating Country may not be financed under the Assistance if transported either: (1) on an ocean vessel or aircraft under the flag of a country which is not included in A.I.D. Geographic Code 935 as in effect at the time of shipment; or (2) on an ocean vessel which A.I.D., by written notice to the Cooperating Country, has designated as ineligible; or (3) under an ocean or air charter which has not received prior A.I.D. approval.

(b) Costs of ocean or air transportation (of goods or persons) and related delivery services may not be financed under the Assistance, if such goods or persons are carried: (1) on an ocean vessel under the flag of a country not, at the time of shipment, identified under the paragraph of the Agreement entitled "Procurement Source: Foreign Exchange Costs", without prior written A.I.D. approval; or (2) on an ocean vessel which A.I.D., by written notice to the Cooperating Country, has designated as ineligible; or (3) under an ocean vessel or air charter which has not received prior A.I.D. approval.

(c) Unless A.I.D. determines that privately-owned United States flag commercial ocean vessels are not available at fair and reasonable rates for such vessels: (1) at least fifty percent (50%) of the gross tonnage of all goods (computed separately for dry bulk carriers, dry cargo liners and tankers) financed by A.I.D. which may be transported on ocean vessels will be transported on privately-owned United States flag commercial vessels; and (2) at least fifty percent (50%) of the gross freight revenue generated by all shipments financed by A.I.D. and transported to the territory of the Cooperating Country on dry cargo liners shall be paid to or for the benefit of privately-owned United States flag commercial vessels. Compliance with the requirements of (1) and (2) of this subsection must be achieved with respect to both any cargo transported from U.S. ports and any cargo transported from non-U.S. ports, computed separately.

Section C.7. INSURANCE. (a) Marine insurance on goods financed by A.I.D. which are to be transported to the territory of the Cooperating Country may be financed under the Assistance, as a Foreign Exchange Cost under this Agreement provided: (1) such insurance is placed at the lowest available competitive rate; and (2) claims thereunder are payable in the currency in which such goods were financed or in any freely convertible currency. If the government of the Cooperating Country, by statute, decree, rule, regulation or practice discriminates with respect to A.I.D.-financed procurement against any marine insurance company authorized to do business in any State of the United States, then all goods shipped to the territory of the Cooperating Country financed by A.I.D. hereunder will be insured against marine risks and such insurance will be placed in the United States with a company or companies authorized to do a marine insurance business in a State of the United States.

(b) Except as A.I.D. may otherwise agree in writing, the Cooperating Country will insure, or cause to be insured, goods financed under the Assistance imported for the Project against risks incident to their transit to the point of their use in the Project; such insurance will be issued on terms and conditions consistent with sound commercial

practice and will insure the full value of the goods. Any indemnification received by the Cooperating Country under such insurance will be used to replace or repair any material damage or any loss of the goods insured or will be used to reimburse the Cooperating Country for the replacement or repair of such goods. Any such replacement will be of source and origin of countries listed in A.I.D. Geographic Code 935 as in effect at the time of replacement, and, except as the Parties may agree in writing, will be otherwise subject to the provisions of the Agreement.

Section C.8. U.S. GOVERNMENT-OWNED EXCESS PROPERTY. The Cooperating Country agrees that wherever practicable United States Government-owned excess personal property, in lieu of new items financed under the Assistance should be utilized. Funds under the Assistance may be used to finance the costs of obtaining such property for the Project.

Article D. TERMINATION; REMEDIES

Section D.1. CANCELLATION BY COOPERATING COUNTRY. The Cooperating Country may, by giving A.I.D. 30 days written notice, cancel any part of the Loan or the Grant which has not been disbursed or committed for disbursement to third parties.

Section D.2. EVENTS OF DEFAULT; ACCELERATION. It will be an "Event of Default" if the Cooperating Country shall have failed: (a) to pay when due any interest or installment of principal required under this Agreement; or (b) to comply with any other provisions of this Agreement; or (c) to pay when due any interest or installment of principal or other payment required under any other loan, guaranty or other agreement between the Cooperating Country or any of its agencies and A.I.D. or any of its predecessor agencies. If an Event of Default shall have occurred, then A.I.D. may give the Cooperating Country notice that all or any part of the unrepaid Principal will be due and payable sixty (60) days thereafter, and unless such Event of Default is cured within that time:

- (1) Such unrepaid Principal and accrued interest hereunder will be due and payable immediately; and
- (2) The amount of any further disbursements made pursuant to then outstanding commitments to third parties or otherwise will become due and payable as soon as made.

Section D.3. SUSPENSION. If at any time:

- (a) An Event of Default has occurred; or
- (b) An event occurs that A.I.D. determines to be an extraordinary situation that makes it improbable either that the purpose of the Assistance will be attained or that the Cooperating Country will be able to perform its obligations under this Agreement; or
- (c) Any disbursement by A.I.D. would be in violation of the legislation governing A.I.D.; or
- (d) The Cooperating Country shall have failed to pay when due any interest, installment of principal or other payment required under any other loan, guaranty, or other agreement between the Cooperating Country or any of its agencies and the Government of the United States or any of its agencies;

then A.I.D. may:

- (1) Suspend or cancel outstanding commitment documents to the extent they have not been utilized through irrevocable commitments to third parties or otherwise, giving prompt notice thereof to the Cooperating Country;
- (2) Decline to issue additional commitment documents or to make disbursement other than under existing ones; and
- (3) At A.I.D.'s expense, direct that title to goods financed under the Assistance be transferred to A.I.D. if the goods are from a source outside the Republic of the Philippines, are in a deliverable state and have not been offloaded in ports of entry of the

Republic of the Philippines. Any disbursement made under the Loan with respect to such transferred goods will be deducted from Principal.

Section D.4. CANCELLATION BY A.I.D. If, within sixty (60) days from the date of any suspension of disbursements pursuant to Section D.3, the cause or causes thereof have not been corrected, A.I.D. may cancel any part of the Assistance that is not then disbursed or irrevocably committed to third parties.

Section D.5. CONTINUED EFFECTIVENESS OF AGREEMENT. Notwithstanding any cancellation, suspension of disbursement, or acceleration of repayment, the provisions of this Agreement will continue in effect until the payment in full of all Principal and accrued interest hereunder.

Section D.6. REFUNDS. (a) In the case of any disbursement which is not supported by valid documentation in accordance with this Agreement, or which is not made or used in accordance with this Agreement, or which was for goods or services not used in accordance with this Agreement, A.I.D., notwithstanding the availability or exercise of any other remedies provided for under this Agreement, may require the Cooperating Country to refund the amount of such disbursement in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(b) If the failure of the Cooperating Country to comply with any of its obligations under this Agreement has the result that goods or services financed under the Assistance are not used effectively in accordance with this Agreement, A.I.D. may require the Cooperating Country to refund all or any part of the amount of the disbursements under this Agreement for such goods or services in U.S. Dollars to A.I.D. within sixty days after receipt of a request therefor.

(c) The right under subsection (a) or (b) to require such a refund of a disbursement will continue, notwithstanding any other provision of this Agreement, for three years from the date of the last disbursement under this Agreement.

(d) (1) Any refund under subsection (a) or (b), or (2) any refund to A.I.D. from a contractor, supplier, bank or other third party with respect to goods or services financed under the Assistance, which refund relates to an unreasonable price for or erroneous invoicing of goods or services, or to goods that did not conform to specifications, or to services that were inadequate, will (A) be made available first for the cost of goods and services required for the Project, to the extent justified; and (B) the remainder, if any, (i) if derived from Loan funds, will be applied to the installments of Principal in the inverse order of their maturity and the amount of the Loan reduced by the amount of such remainder, and (ii) if derived from Grant funds, will be applied to reduce the amount of the Grant.

(e) Any interest or other earnings on Grant funds disbursed by A.I.D. to the Cooperating Country under this Agreement prior to the authorized use of such funds for the Project will be returned to A.I.D. in U.S. dollars by the Cooperating Country.

Section D.7. NONWAIVER OF REMEDIES. No delay in exercising any right or remedy accruing to a Party in connection with its financing under this Agreement will be construed as a waiver of such right or remedy.

Section D.8. ASSIGNMENT. The Cooperating Country agrees, upon request, to execute an assignment to A.I.D. of any cause of action which may accrue to the Cooperating Country in connection with or arising out of the contractual performance or breach of performance by a party to a direct U.S. dollar contract with A.I.D. financed in whole or in part out of funds granted by A.I.D. under this Agreement.